



LABOUR RISKS IN THE THAI AND INDONESIAN FISHING INDUSTRIES

A PRACTICAL GUIDE FOR RESPONSIBLE SOURCING

SERIES PAPER 5

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The fishermen shown in the photos in this report have all provided informed consent to their photos being used for this report.

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INTRODUCTION

A recent British Academy-funded research study on labour risks in the Indonesian seafood supply chain, led by Coventry University and in partnership with Issara Institute, University of Indonesia, and IOM Indonesia, identified a range of labour risks that exist on Indonesian fishing vessels¹. The exploratory nature of this qualitative study aimed only to identify risks that exist; it did not aim to ascertain distribution or prevalence (which is a much larger research endeavor); thus, it should not be concluded that the risks documented in this paper are representative of wider labour situations in the Indonesian fishing industry. However, the research is very valuable in providing indications of labour risks that may exist in the supply chains of Indonesian seafood buyers that responsible sourcing teams would want to be aware of.

Vessel-level labour risks in the Thai fishing industry are much more well-documented than Indonesian, by NGOs, researchers, journalists, and industry alike², with the most statistically rigorous documentation of labour risk and abuses to date being a 2017 nationwide study of the prevalence of a range of labour abuses in the Thai fishing industry³. Thus, with the Thai fishing industry, a range of skills, tools, and programs have been developed to contribute to more responsible seafood sourcing. In order to support the development of more effective corporate responses to labour risks and abuses in the Indonesian and Thai seafood industries, and reflecting on the framework and priorities of the Modern Slavery Act (2015), the California Transparency in Supply Chains Act (2010), the French Duty of Vigilance Act (2017), and

the Australian Modern Slavery Act (2018), this brief aims to:

1. Deconstruct labour risks at the vessel level in Indonesia and Thailand, from the perspective of:
 - a. Supply chain risk,
 - b. Labour recruitment,
 - c. Terms and conditions of payment, and
 - d. Working conditions at sea.
2. Provide guidance on how to improve due diligence regarding these risks within a supply chain, both with and without worker engagement (depending on the company's ability to ensure safeguards and remediation).

Many responsible sourcing teams, especially those of retailers, manage a global portfolio and thus have to balance competing budget priorities to support a wide range of products and initiatives that span labour, environment, traceability, and sustainability, among others. Risk assessments help determine the type of goods, locations, and context that, in turn, impact the resources and partnerships the business support. Industries and geographies that have been flagged as high risk or suppliers that are highly strategic will naturally receive greater attention than those that do not. This brief aims to offer an empirically-driven, field-tested guidance to help inform prioritization and the determination of where deeper due diligence, investigation, and possibly remediation resources may be beneficial.

SUPPLY CHAIN RISK

KEY RESEARCH FINDINGS

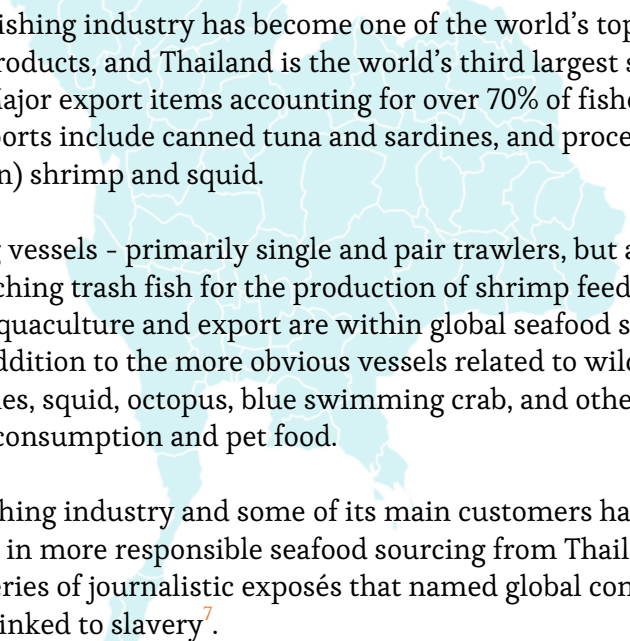
INDONESIA

- Indonesia's wild capture and aquaculture exports were valued at between \$3 to \$4 billion in 2017⁴, with declines in fishery production in recent years as compared with production at an estimated \$18 billion in 2015 but still the world's second largest capture and aquaculture yield in the world, behind China⁵.
- Buyer internal systems do not seem to be picking up on serious labour issues in the Indonesian fishing sector, particularly at a vessel level. This is impacted by how information is collected and by whom. Buyer respondents in the Coventry-led 2019 research⁶ reported that most internal information on supplier workplace conditions come via technical audits and food safety and health checks, and with limited government oversight. Working conditions are not always probed, and the typical approach is to seek input directly from the employer, and perhaps without sufficient labour/social expertise on the part of the auditor.
- At the vessel level, government oversight of conditions is largely not practiced, particularly for smaller vessels. The external and third-party audits and certification schemes most commonly engaged for on-shore seafood processing in Indonesia - Sedex Member Ethical Trade Audits (SMETA), Global Aquaculture Alliance (GAA), Aquaculture Stewardship Council (ASC), Marine Stewardship Council (MSC) and Best Aquaculture Practices (BAP) - are not found at the vessel level, and social/labour components are not safely validated by workers. Although worker-led organisations and unions provide some support to fishermen who are members, their range is limited. Processing employees may be supported by internal or external unions, but these are often politicized or reportedly viewed by workers as ineffective. Worker voice as a primary source of information or verification is thus largely absent.

SUPPLY CHAIN RISK

KEY RESEARCH FINDINGS

THAILAND

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- Thailand's fishing industry has become one of the world's top exporters of fishery products, and Thailand is the world's third largest seafood exporter. Major export items accounting for over 70% of fishery product exports include canned tuna and sardines, and processed (often frozen) shrimp and squid.
 - Thai fishing vessels - primarily single and pair trawlers, but also purse seines - catching trash fish for the production of shrimp feed as related to shrimp aquaculture and export are within global seafood supply chains, in addition to the more obvious vessels related to wild-caught tuna, sardines, squid, octopus, blue swimming crab, and other products for human consumption and pet food.
 - The Thai fishing industry and some of its main customers have become more active in more responsible seafood sourcing from Thailand, in the wake of a series of journalistic exposés that named global companies reportedly linked to slavery⁷.

Global brand and retailer responsible sourcing teams are facing increasing pressure to demonstrate that their businesses source from suppliers with good working conditions, that their supply chains have no slavery or forced labour, and that codes of conduct are being adhered to. This can be a daunting task for extended supply chains, especially beyond Tier-1, and in locations where there is light regulatory touch and lack of supporting institutions and civil society. In the case of the seafood industry, onshore and offshore locations make oversight significantly more difficult.

With regard to supply chain risk, it is noteworthy that the key modern slavery laws (as listed in the introduction) do mandate a responsibility on the part of businesses to act to *improve the conditions of workers across their entire supply chain*, including beyond the first tier. Thus, with regard to Indonesian and Thai seafood, the first question that businesses may ask is - which products of the Indonesian and Thai seafood sectors are domestically consumed, and which are exported to countries where businesses are taking responsibility for labour risks in their supply chains? And following this, of those exported products, how can we understand where the risks lie within our own supply chains?

In order to answer this, responsible sourcing teams and their technical colleagues may need to deconstruct their seafood supply chains across all tiers, to examine which tiers - such as wild capture, aquaculture, and processing (which can have more than one tier) - are located in Indonesia or Thailand, and which are not. For example, some canned tuna exported from Indonesia contains tuna fished in Indonesian waters, but some contain tuna fished in other countries such as the Maldives. Some tuna

canned in Thailand are fish caught in Indonesian waters. Some shrimp farmed in Indonesia may be raised on feed originating from Thailand, meaning that all the (predominantly foreign) workers in the Thai feed mills, fishmeal plants, and trawlers would be included in the supply chain. The exercise of extended supply chain mapping provides a picture of the universe of all workers for whom companies have a responsibility to ensure decent working conditions and no exploitation, trafficking, or modern slavery.

In the 2019 Coventry-led research, global buyer respondents reported that upstream traceability of product was an overall concern and there was general lack of visibility of vessel level working conditions. Respondents reported that they had some awareness of supply chain labour risk involved for forced labour and human trafficking in their own supply chain, with most self-scoring either 2 or 3 on a scale of 1 to 5 (1 is no awareness and 5 is full awareness). Supply chain mapping has reportedly improved in recent years but awareness of labour risks at the industry level was typically self-scored at 2. Recruitment practices were also identified as a topic that had generally not been looked into. The use of supplier self-reporting and reliance on audits in an environment where civil society and worker voice channels are limited or may not exist, was highlighted as a challenge and the veracity of labour condition information received was questioned. External and third party audits and certification schemes, such as SMETA Sedex audits, GAA, ASC/MSC and BAP certifications, were the primary source of information regarding working conditions. Worker voice, as the primary source of information or verification, was largely absent.

To date, for the Indonesian seafood sector, buyers report lacking labour-related intelligence outside of what is collected through typical audit compliance mechanisms. Many ethical trade and responsible sourcing teams voiced concerns and suspect there may be more serious labour issues in Indonesia than that which

their audits are detecting, but stated that they are not receiving the concrete information and details needed to elevate risk levels and drive greater attention to the working conditions in the industry. This may change, however, as more research and campaigning emerge regarding labour abuses and risks in the seafood sector.

IMPROVING DUE DILIGENCE & RESPONDING TO RISKS

Prioritizing deeper due diligence requires having visibility of entire extended supply chains, which - in the case of the Thai fishing industry in 2014 - many companies, both buyers and processors/exporters, realized they did not have a good handle on. One of the more prominent responses was the formation of the Shrimp Task Force, an industry-led initiative initially organized by Costco and CP Foods that later became the Seafood Task Force. Supply chain mapping exercises became a priority of the Shrimp Task Force, which brought greater visibility to business of all the processors, aquaculture ponds, feedmills, fishmeal plants, and - for some - fishing vessels providing trash fish as a key raw material for shrimp feed production.

The exercise was a first step that led to different follow-on responses from different business members, for example vessel-level

social audits. Nine different Seafood Task Force subgroups now seek to tackle a range of issues and industry prioritized themes; the challenge facing them is to ensure that the focus moves beyond due diligence and supply chain tracing to actual commitments and actions by business that have a positive impact on the lives of workers, as verified by workers.

Alongside these more concerted efforts to understand the actors and practices in their upstream supply chain, many individual processors - especially among some of the larger players - began consolidating their sourcing and reducing the overall number of businesses in their supply chain. A narrower supplier base has helped focus efforts and improve awareness and supply chain management. And while data gaps still exist, overall industry supply chain traceability has been improving.

LABOUR RECRUITMENT

KEY RESEARCH FINDINGS

INDONESIA

- Recruitment of Indonesians to work on Indonesian fishing boats is highly informal and embedded within social networks. 2019 research⁹ found that when captains recruit their friends, or when captains in the larger ports of Benoa, Muaru Baru, Bitung, and Ambon recruit men hanging around the port 'walking up' for work, less exploitation was reported. However, when captains and fishing companies were unable to recruit from among the captain's social networks or from 'walk-ups,' they used *calo* (intermediary labour brokers) and exploitation was likely to occur. Larger recruitment agencies do not recruit crew for the domestic fishing industry.
- *Calo* were documented to be used in Benoa, Bitung, and Muara Baru where larger vessels require crews of up to 30 men; *calo* tended to be former crew or local gangsters. Cases were documented where fishers from Tegal and Benoa were charged fees of up to 2 to 3 million Indonesian Rupiah (US \$140-215), and because job seekers often lack the funds to pay this up front, and expect or require advances to address family poverty and debt, the vessel owning companies offer a *kas bon* (cash advance) to cover these fees, leading to debt bondage. *Calos* interviewed in the 2019 study reported receiving cash advances of 10 million Rupiah (US \$710) per crew, of which the crewmember might receive 3 to 4 million Rupiah (US \$215-285), while the *calo* kept 6 to 7 million per person (US \$425-500) as a fee.

LABOUR RECRUITMENT

KEY RESEARCH FINDINGS

THAILAND

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- The great majority of Thailand's commercial fishing fleet is crewed by migrant workers, with the exception of senior staff positions such as captain and engineer. The recruitment of these migrant worker fishermen, up to 2018, has been entirely unregulated informal recruitment, with 76% of fishermen respondents in a nationwide prevalence study having ever been in debt bondage to the vessel owner or a broker. Recruitment onto Thai fishing boats has been informal up to 2019, because the source country governments of Myanmar and Cambodia have prohibited their citizens from formal labour recruitment through government-to-government channels into the Thai fishing industry.¹⁰
 - At present, in 2019, the Myanmar Government has reached agreements with the Royal Thai Government to allow formal labour recruitment into the Thai fishing sector through the formal government-to-government Memorandum of Understanding (MOU) process; however, most vessel owners report an unclear process and high recruitment fees being quoted by Thai middlemen agents as a deterrent to hiring fishermen through the regulated government channel.

Informality of recruitment practices may be a stronger predictor of exploitative labour recruitment than nationality. The more extensive literature on human trafficking in the Thai and New Zealand fishing industries, for example, has outlined a range of labour risks and abuses, including - at worst - forced confinement, physical abuses, and murder. Oftentimes, there are associations between the worst working conditions, and debt bondage tied to exploitative labour recruitment.¹¹ There are clearly a number of risk points in the recruitment of foreign workers onto Thai and New Zealand-flagged vessels. For Indonesia, then, the outstanding question that the 2019 research explored was whether similar risks of exploitative labour recruitment found in other countries' fishing industries would be found in Indonesia as well, owing to the hazardous nature of work and difficulty in recruiting workers into commercial fishing - or, whether these risks are not similar or relevant in Indonesia because the vast majority of fishermen are Indonesian nationals?

The Indonesian commercial fishing industry, particularly as compared with the Thai commercial fishing industry, is often described as much more artisanal, with a large proportion of family-owned small enterprises comprised of small vessels employing a small number of fishermen going out to sea for relatively short durations. The picture is one that conveys, generally, a sense of relatively lower risk of labour exploitation on Indonesian fishing vessels.

However, the assumptions that labour risks are relatively low in the Indonesian fishing sector due to smaller, more traditional vessels fishing for shorter durations at sea and using Indonesian crew are suggested to be false by this research. The use of *calo*,

advance payments leading to debts, retention of identity documents, and lack of contracts arising from the recruitment process present potential labour risks, even more so due to the cascading negative consequences often related to these such as overwork and underpay. And while this practice may be more prevalent on vessels with larger crew, it highlights risks within the domestic fisheries sector. In short, the overall informality of the transaction, and growing pressures on vessels owners posed by labour shortage more broadly, are risks faced by both the Thai and Indonesian fishing industry.

Thus, Indonesia's formerly traditional, familial-based artisanal fishing is transforming into a more globally-connected commercial fishing sector with certain traditional practices appearing to persist, but in a way that largely benefits vessel owners over crew. For example, the cost-and-profit-sharing of the past, which had kin sharing ownership and profits of vessels and catch, has transformed into a less fair and equitable model whereby vessel owners "sharing" costs and risks with crew appears to be simply shifting risk and costs to crew, despite the fact that crew do not hold any ownership or decision-making power, as traditional kin did. Further, the inherent social protective factors assumed to exist in the traditional, artisanal environment were proven to not extend to non-kin domestic migrants hired, often through middlemen, from elsewhere in Indonesia.

There is a need for business to bring the momentum of ethical recruitment to Indonesia. Responsible recruitment practices, which have been gaining attention by global buyers in other Asian countries such as Thailand, Malaysia, and the Philippines, are not yet receiving much

attention in the Indonesian seafood industry, according to seafood buyer respondents in the 2019 research study. Recruitment seems to be a glaring blind spot in overall labour risk assessment for workers and business. Responsible sourcing team respondents reported not knowing the recruitment practices of their suppliers, the names of the recruitment agencies involved, or any of the fees being charged, to workers or brokers. They also did not have in place robust plans for determining risks associated with recruitment vulnerability, such as debt bondage, excessive and illegal fees, or risks regarding the nature of the work and the employer being different than promised. As recruitment continues to be recognized as a key element of labour risk that can place workers in vulnerable situations even before arriving at the factory doorstep or pier, and continues to impact their well-being and safety throughout their tenure of employment, greater efforts need to be made to ensure that labour arrangements not only meet national Indonesian labour law standards and also the codes of conduct and requirements of global buyers, not least because fishing, as an informal sector, has

no specific regulation governing recruitment into the fishing sector.

More transparent, responsible recruitment lags in the Thai fishing industry as well.

Despite agreement between the Myanmar and Thai Governments to open a formal labour recruitment channel to crew Thai fishing boats in 2019, very few workers are being processed through this channel because (a) Thai agents are charging Thai vessel owners exorbitant fees for their middleman services to connect with Myanmar recruitment agencies; (b) Myanmar recruitment agencies are reluctant to expose their reputation and license to operate to risk by sending workers into an industry with a poor reputation; and, (c) informal broker networks, connections, and illegal and unethical practices persist, on both the origin and destination sides. More generally, with regard to the Myanmar-Thai MOU channel in general, enforcement of laws protecting job seekers from broker cheating and exploitation have been documented to be on the rise since 2018 on the Myanmar side,¹² though enforcement in Thailand of laws regarding excessive fees in labour recruitment is weak.

Fishermen in Tegal, Central Java, Indonesia. Manning agencies, brokers, and captains target Tegal as a specific region which produces fishers for overseas fishing as well as within the domestic industry. Tegal men are viewed by agencies (and each other) as especially suited to the hard work that fishing requires.



WHAT DO LOCAL LAWS AND POLICIES SAY ABOUT LABOUR RECRUITMENT FEES AND TERMS RELATED TO WORK ON FISHING BOATS IN INDONESIA AND THAILAND? WHAT DOES ILO CONVENTION 188 SAY?

In Indonesia, the great majority of fishermen are Indonesian and so only Indonesian law needs to be considered. However, because fishing is considered an informal sector, as of April 2019, Indonesia has no specific regulation governing recruitment into this sector, including no limitations on fees that can be charged to workers in the recruitment process.

In Thailand, the majority of fishermen are from Cambodia and Myanmar, and so the relevant laws to be considered are those of the two origin countries as well as of Thailand as the destination country. In short, Thailand has a range of ministerial regulations, royal ordinances, and emergency decrees which limit the amount of money that can be charged to a worker to approximately 7,000 baht (\$215), although different regulations and cost categories allowed on the Thailand side have been recognized by each respective government and have changed. At the same time, the Government of Myanmar's laws and policies limits charges to workers at 150,000 Kyat (US \$98) for recruitment service fee plus 3,600 Baht (US \$110) for visa, health check, work permit, application fee, and social security only on the Thai side.¹³ Further, within the bilateral government administration of the MOU channel into fishing, the Myanmar Government requires compliance with 22 criteria (including wages, payment, insurance, and health and safety matters), use of a standard employment contract, and payment of a minimum of 12,000 Baht per month (US \$378) rather than the 9,000 Baht per month (US \$285) national minimum wage.

It may be noteworthy to add that ILO Convention 188 on Work in Fishing (2007) specifies that employers pay the costs of recruiting fishermen, and that no fees be borne by workers:

“Any recruitment service must be established in conformity with a standardized system of licensing and no fees or other charges for recruitment or placement of fishers be borne directly or indirectly by the fisher.”

Thailand was the first Asian country to ratify the Convention, in January 2019; Indonesia has not ratified the convention.

IMPROVING DUE DILIGENCE & RESPONDING TO RISKS

Step 1. Clarify your company's acceptable standard for labour recruitment. As a first step for due diligence regarding labour recruitment, your company should undertake a process of understanding the differences between your own codes of conduct and supplier standards, and the standards for labour recruitment set by the laws of the source and destination country. Most often, corporate standards will exceed national law. For example, for Myanmar workers in Thailand, Myanmar and Thai law allows for some costs and fees of recruitment to be charged to the worker: 150,000 kyat plus 3,600 Baht as of April 2019. Yet some seafood buyers buying from factories and vessels in Thailand have employer-pays, no-fees-to-workers policies for ethical recruitment. Others do not have as high of a standard, but do have standards for transparency and fair, regular employment.

This means that vessel owners (and all other processors and employers in the supply chain) are likely using recruitment systems that fall into one (or more) of four categories:

1. Illegal recruitment: recruitment practices that violate source and/or destination country law
2. Legal recruitment that meets local laws but does not meet corporate standards
3. Legal recruitment that meets both local laws and corporate standards (which may or may not be ethical recruitment)
4. Ethical recruitment: recruitment practices that meet local laws, corporate standards, and ethical recruitment standards

Ask your suppliers the fee breakdowns, specifying who pays for what, and know where your suppliers fit in! It may be worthwhile to ask open-ended questions requesting explanations of how recruitment works step by step, how relationships with and expectations of recruitment agencies are managed, and how aware management is of recruitment practices, to attempt to ascertain whether more serious risks such as debt bondage or retention of identity documents may exist.

Step 2. Determine whether your company is willing and able to ensure safeguards and remedy for workers, and if workers are to be engaged in the process of due diligence or risk mitigation. The answer to this question may change over time, but essentially, if Step 1 initial due diligence data collection (not involving workers) uncovers possible risks and harms to workers, then compliance and responsible sourcing teams must determine whether it would like to pursue more rigorous worker engagement, to attempt to verify whether labour risks really occur. However, before deciding to pursue this valuable due diligence information, ethical businesses will first have to consider what they are willing and able to do if workers do, indeed, report experiencing debt bondage, withholding of identity documents, or exploitative working conditions. Some important questions to consider at this stage include:

1. Are safeguards in place to protect the identity of workers sharing sensitive information, both at the time of disclosure and in the time that follows, when workers may continue to be at risk of reprisal?

2. Is the company prepared to ensure remedy to workers to respect their rights as well as to encourage their supplier back into compliance with the standard identified in Step 1?

If the answer to either of the questions above is 'no' then companies should refrain from engaging with workers, who may disclose more serious security or welfare issues than that which the company is prepared to handle. This is, in short, a decision to be sure to Do No Harm, the fundamental tenet of ethics.

Who can help with the provision of safeguards to workers, days or weeks after an interview? Naturally, it would have to be an entity in the locality of the workers that is trusted by workers, and independent of employers and brokers. If this is a function that your business is not able to fulfill (as most businesses could not), then consider partnership with a locally-based civil society organisation with demonstrated trust of workers. For additional resources on referrals, please see FishWise's RISE Seafood

website at www.RISEseafood.org, which contains a referral hub with some development partners who fulfill these minimum criteria.

Step 3. Engaging suppliers on labour recruitment risks. When taking deeper dives without worker engagement, businesses can explore these complex issues with the following guidance; it is recommended that, at the same time, the company works to establish mechanisms for safeguards and safe, effective remediation if further signs of risk are detected.

LABOUR RECRUITMENT: TERMS, CONDITIONS, & CONTRACTS

- ✓ Request company policies on labour recruitment and note whether they are committed to employer-pays, national law, or something else.
- ✓ Request company's service agreements with all recruiters and employment agencies, checking to see that:
 - ✓ They exist
 - ✓ They detail all services, fees, and who pays what

SAFEGUARDS AGAINST REPRISAL



If safeguards are NOT in place on the ground to protect workers, it is better to NOT engage workers in due diligence at all. Social audits, worker feedback surveys, and other due diligence methods all have the potential to expose workers to threats, reprisals, or harm in the days and weeks after the interview.

- ✓ They outline clear roles and responsibilities of all parties
- ✓ Ask different people within management and the HR department how the company selects its labour recruiters, and how they conduct due diligence to prevent forms of deception or debt bondage in the recruitment process, and to maximize transparency and accountability.
- ✓ If a company has its own employment contract, check to see that the terms and conditions do not conflict with national laws or bilateral mechanisms (such as the Myanmar-Thai and Cambodia-Thai MOU channel).
- ✓ Check if management and the employees involved in recruitment fully understand the laws and policies of respective governments that govern recruitment and approaches and allowable fees.
- ✓ Request to see the complete employment files of workers, checking to see whether:
 - ✓ Employment contracts are signed and counter-signed by both employer and employee
 - ✓ Employment contracts are in the language of the business as well as the language of the worker
 - ✓ Languages and nationalities match, when comparing the passport scan of the worker and the language of the employment contract
 - ✓ Workers receive countersigned copies, and when

DOCUMENT RETENTION

- ✓ Request company policies on human trafficking or modern-day slavery, which should include sections on document retention
- ✓ Separately ask different HR staff where employee documents are kept, for what purposes, and how long
- ✓ Identify which staff member is

responsible for holding crew identification documents, and under what circumstances is retention of crew identification documents allowed - noting that, in Indonesia, vessel owners have recently been permitted by law¹⁴ to retain the identity documents of workers and present them to authorities, coupled with crew manifests, as proof of employment in lieu of written employment contracts. This may violate your business' standards for suppliers.

Step 4. Ensuring safeguards and engaging workers. If the company is committed to ensuring safeguards and remediation for workers and it is therefore safe and ethical to engage workers...

- ✓ For identifying and resolving issues with labour recruitment terms, conditions, and contracts, develop or plug into a worker voice-driven labour recruitment program operating across source and destination countries. If none are available, consider a partnership with an organisation who can support more targeted data collection with safeguards and links to remediation.
- ✓ Check with workers to see whether that which has been reported by the business is true for their own experience and that of their colleagues - for example, did the contracting process really go the way the company described? Were fees managed the way the company described? Do they really have copies of their contracts, and their original documents? Were their documents ever retained for an extended period of time, and if so when and by whom?
- ✓ See whether workers raise issues of document retention through worker voice mechanisms and/or more targeted data collection with safeguards and links to remediation.

CASE STUDY

A global brand was concerned about potential labour abuses in its seafood supply chain, based on screening factors such as the industry, source country, use of foreign migrant workers, and media reports.

The business decided to commission a social audit to engage with a sample of vessels and fishermen in its supply chain, as part of its due diligence and risk assessment process. The audit included speaking with vessel captains and fishermen through a translator, and identified a number of labour violations, including lack of payslips or payslips not in the native language of the fishermen, delayed and underpayment of wages, excessive working hours, and potential instances of debt bondage to the net supervisor. One of the fishermen asked the auditor if the business that paid for the audit would be able to help; the fisher was also nervous if the sensitive information he shared would get back to the boat captain.

A dilemma followed regarding how to proceed with the information received from the audit. What information could or should the brand share with the processor whose supply chains the vessels were in? Or with the relevant vessel owner or boat captain? The brand believed that its leverage with the vessel owner to correct the situation was minimal - it didn't have a direct relationship with the business owner. Also, the percent of seafood purchased from the associated processing facilities were small. There was also a strong likelihood that these labour issues were also present in other non-sampled vessels in their supply chain.

The brand wanted to be responsible and do the right thing - not exiting the situation when labour risks arose by simply switching purchasing to another supplier, knowing the situation that fishermen in its current supply chain were in. This case study is a reality for many brands and importers sourcing seafood globally. It highlights the importance of the 4 steps above, and thinking through actions in advance of engaging with workers, whether through audits or other worker feedback mechanisms, and the roles and strengths of partners on the ground when enforcement of labour conditions by inspectors and government is not effective.

Next steps actions for this brand could include:

- partnering with local organisations on the ground who can support affected fishermen and provide safeguards, as well as potentially work with the business to drive improvements as issues are remedied;
- using a supply chain approach to work with stakeholders who have greater influence at the fisheries level, if their standards and safeguards for worker welfare are aligned;
- seeking coalitions of other buyers to drive change; and,
- supporting effective grievance and worker voice channels for fishermen, assuming they have trust of those channels.

In this instance, risk to fishermen participating in the audit was elevated through the buyer due to a lack of strategy in place for handling negative information received, and a lack of clear policies for handling labour and human rights risks in upstream supply chain.



Above: Fishing crew offloading tuna and marlin— Benoa Port, Bali, Indonesia.
Below: A purse seine vessel after unloading its catch— Tegal, Central Java, Indonesia.

TERMS & CONDITIONS OF PAYMENT

KEY RESEARCH FINDINGS

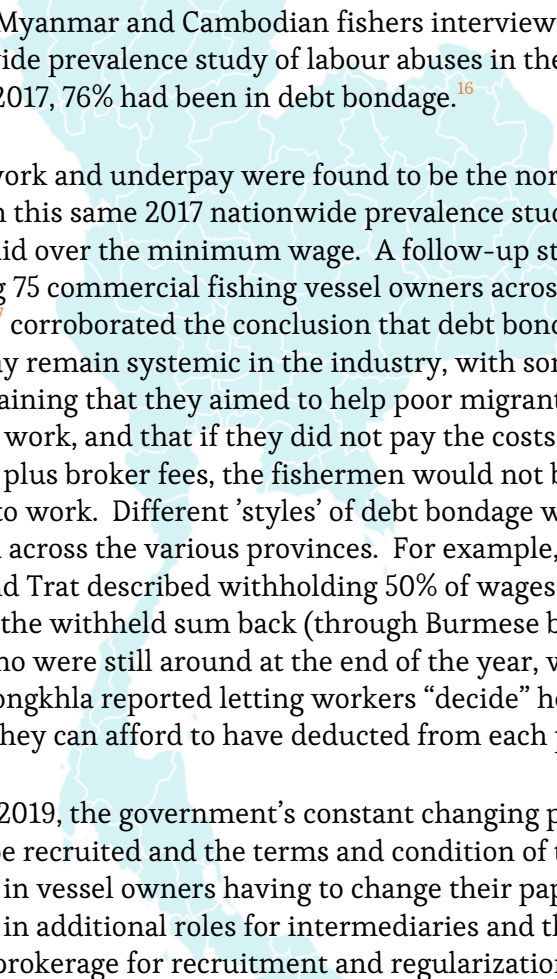
INDONESIA

- A 2019 exploratory qualitative study interviewing a wide range of stakeholders in and related to Indonesian seafood, including 44 Indonesian fishermen, did not find evidence of forced labour conditions on a systemic scale¹⁵. However, examples of exploitative labour conditions were documented, particularly with regard to payment schemes; less so with regard to working conditions and physical abuse.
- Serious underpayment and non-payment of wages was reported by fishers on domestic and international fishing, both related to *kas bon* ('cash bond,' or debt bondage based on cash advances paid to fishers). On domestic vessels, payment is typically made at the end of a trip and based on profit made from catch, with deductions for expenses such as food, water, and debt payments, as well as for "shared" business costs such as fuel, nets, and oil. Brokers were reported to cheat fishers on international vessels as well; for example, Taiwanese companies reportedly paid Indonesian brokers to remit funds to fishers' families in Indonesia, but the Indonesian broker was not paying remittances back to families of the fishermen as arranged.

TERMS & CONDITIONS OF PAYMENT

KEY RESEARCH FINDINGS

THAILAND

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- Among 248 Myanmar and Cambodian fishers interviewed in Thailand in a nationwide prevalence study of labour abuses in the Thai fishing industry in 2017, 76% had been in debt bondage.¹⁶
 - Illegal overwork and underpay were found to be the norm for fishermen in this same 2017 nationwide prevalence study, with only 11% being paid over the minimum wage. A follow-up study in 2018 interviewing 75 commercial fishing vessel owners across 10 provinces in Thailand¹⁷ corroborated the conclusion that debt bondage, overwork, and underpay remain systemic in the industry, with some vessel owners explaining that they aimed to help poor migrants come to Thailand for work, and that if they did not pay the costs of their recruitment plus broker fees, the fishermen would not be able to come to Thailand to work. Different 'styles' of debt bondage were documented across the various provinces. For example, vessel owners in Pattani and Trat described withholding 50% of wages each month then paying the withheld sum back (through Burmese brokers) to crew members who were still around at the end of the year, while vessel owners in Songkhla reported letting workers "decide" how much debt repayment they can afford to have deducted from each payment.
 - In 2018 and 2019, the government's constant changing process for how fishers can be recruited and the terms and condition of their payment has resulted in vessel owners having to change their paperwork, which has resulted in additional roles for intermediaries and the continuance of informal brokerage for recruitment and regularization.

IMPROVING DUE DILIGENCE & RESPONDING TO RISKS

Step 1. Seek clarification regarding the payment process that vessel owners / boat captains employ for fishers in your supply chain. Separately ask different staff (i.e., boat owners, vessel captains, and net supervisors) to describe how wages and OT are calculated, and what supporting documentation is provided to fishers.

For responsible sourcing and risk reduction, it is important to become informed about relevant national labour laws and if they meet your company standards. As noted for Thailand and Indonesia, legislation can vary by country and is often evolving, such as with new laws being passed or conventions ratified which may or may not have come into force yet. These will provide an important basis for evaluating payment terms and conditions.

Speak with different staff about how wages, overtime, and deductions are being calculated. A fisher's wage can be determined by multiple factors beyond a straightforward hourly wage—for example, wages can be connected to target setting, profit sharing, or incentive schemes that can become coercive or lead to forced overwork and ongoing indebtedness.

In Indonesia, for example, wages are supposed to comprise a mix of basic salary, overtime, production bonus, and sailing allowance, but fishers often do not receive payslips, let alone an accounting of how overtime and production bonus was calculated. Oftentimes workers are asked to sign a document that may show that production data was recorded, but the allocation of payment among fishers is not transparent. Some fishers also reported feeling pressure to sign without

understanding what they are signing, not provided with copies of supporting documents, and believing that their signature on documents is a condition for being paid.

Another challenge for the fisheries industry is regarding overtime and perceptions about what constitutes paid work. The view of many employers is that tasks performed during down periods, such as mending nets or cleaning, should not count towards overtime. This lack of clarity, coupled with the way overtime hours are recorded and the length of time at sea between pay periods, can make transparency and accuracy of working hours problematic.

Step 2. Check whether accounts of payment schemes match, and whether they are in compliance with contracts and national and bilateral laws.

Once feedback is received from different staff, cross-check and verify for consistency, accuracy, and legality.

Step 3. Review payslips to see what deductions are being made, and cross-check with national and bilateral laws to understand allowable deductions.

Debt bondage is a serious issue for many fishers, which has significant knock-on consequences for the employer and the worker. In Thailand, for example, the modes of control and steps taken by boat captains and net supervisors to retain crew arises from a dearth of available fishers. The fisher's debt (often illegal in the first place) that an employer takes on from a broker often drives schemes to keep the fisher in debt and thus under his employ. In Indonesia, a *calo* can extort fishers through

deducting money from their *kas bon* payments (cash advance), charging for accommodation and other items.

In other cases fishers may be paid a legal salary, (a signature or photo of the fisher holding a paycheck may even be taken as evidence), but then additional “off the books” deductions result in fishers returning significant amounts of pay just received. This is why new legislation, such as has come into effect in Thailand and is also included in ILO C188, that requires payment to be made electronically to fishers’ bank accounts has the potential be a more effective, transparent, and auditable payment practice.

In Indonesia, for larger operations where vessels are owned by a company, the practice of Indonesian fishers having to share in the risk and cost of operations

(deductions taken for supplies such as oil, petrol, fishing nets) can shift undue risk to fishers and decrease transparency regarding allowable deductions.

Step 4. If the company is committed to ensuring safeguards and remediation for workers and it is therefore safe and ethical to engage workers...

- ✓ See whether fishers raise issues of wages and deductions, and or wage/benefit theft, through worker voice mechanisms and/or more targeted data collection with safeguards and links to remediation.
- ✓ Review the payslips and contracts of workers, and compare with their testimonies to understand whether documents reflect reality and are in compliance with all relevant laws and codes of conduct.

5 QUESTIONS TO HELP DRAW OUT MANAGEMENT ATTITUDES & SYSTEMS

1. What makes a good crew member, and what are the best ways to find these men?
2. What do you think helps to keep crew morale high, and what do you do to help with and understand crew morale?
3. How are you able to verify working hours at sea?
4. We have found that having untrained crew can often contribute to long working hours for all crew. What kind of training is your crew receiving?
5. If workers are initially hired on a contract specifying a daily rate but you want to switch to a profit-sharing or bonus based on percent of catch, what needs to be done?

WHAT DO LOCAL LAWS AND POLICIES SAY ABOUT TERMS AND CONDITIONS OF PAYMENT FOR WORK ON FISHING BOATS IN INDONESIA AND THAILAND? WHAT DOES ILO CONVENTION 188 SAY?

In Indonesia, Law 7 (2016) Protection and Fisherman Empowerment, addresses gaps in coverage in the existing framework of laws for domestic fishers stemming from the sector being deemed informal. The law requires: fishers to be paid “regularly and on time”; a basic salary (at least two times regional minimum wage or provincial minimum wage); overtime / or waiting time (at least 25% of sailing allowance per day); production bonus (‘premi’) (given to the fishing crew, at least 10% of the total production value distributed to all fishing crew according to occupation and workload); and a sailing allowance (per day of at least 3% of basic salary). Payments should be made in 50% cash and 50% through a bank account.”¹⁸

For both Thai and foreign fishermen in Thailand, the relevant laws state that wages calculated on a monthly, daily, or hourly basis must be paid at least once a month, while wages paid in proportion to the price of the captured aquatic animal shall be paid at the agreed time but no later than once every three months. In all cases, wages must meet or exceed the legal minimum wage established for that province. Further, holiday premium pay must be paid at least once a month.¹⁹ In addition to this, for Myanmar fishers, the Myanmar Government is currently requiring that vessel owners agree to pay Myanmar workers going into the Thai fishing industry is 12,000 Baht per month (30% higher than the Thai national minimum wage) plus overtime.

Thailand ratified ILO Convention 188 on Work in Fishing in 2019, making it the first country in Asia to ratify C188. It will come into force in Thailand on 30 January 2020, a year after ratification. Indonesia has not ratified C188; it reportedly has been working towards this since 2014.

With regard to recruitment fees, Article 22 of C188 states that no fees or other charges for recruitment or placement of fishers are to be borne directly or indirectly by the fisher. C188, however, is silent on the issue of payment scheme (payment according to time worked vs. percentage of catch). Related to payment, it only states that wages must be paid on a monthly or regular basis, and, for cases of remittance of wages to the families of fishers, remittances must be sent at no cost to the fisher.

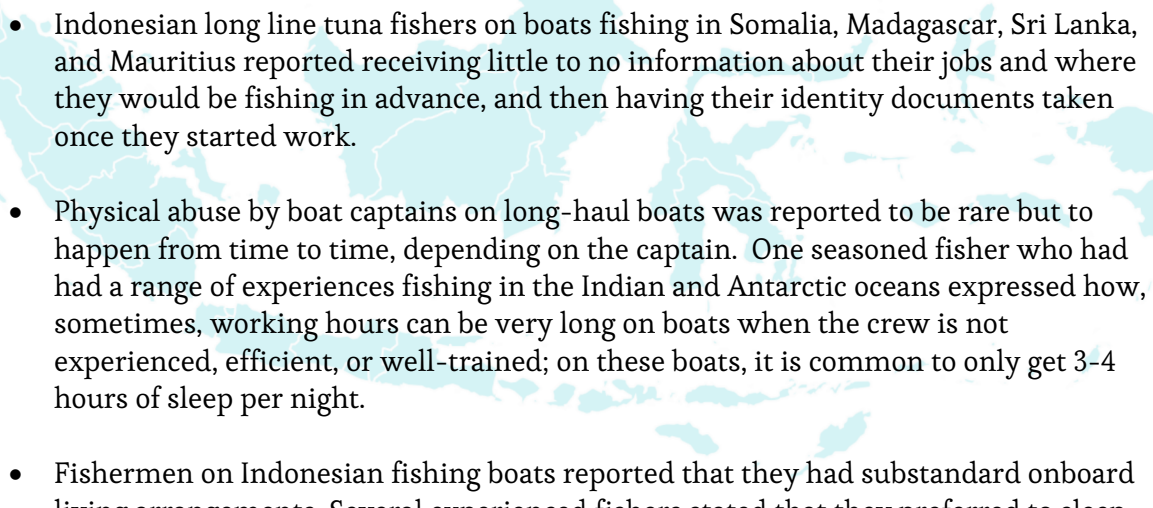
Photo at right: Mending a purse seine net while on-shore—Thailand. Work on shore mending nets counts as work and should be remunerated accordingly.



WORKING CONDITIONS @ SEA

KEY RESEARCH FINDINGS

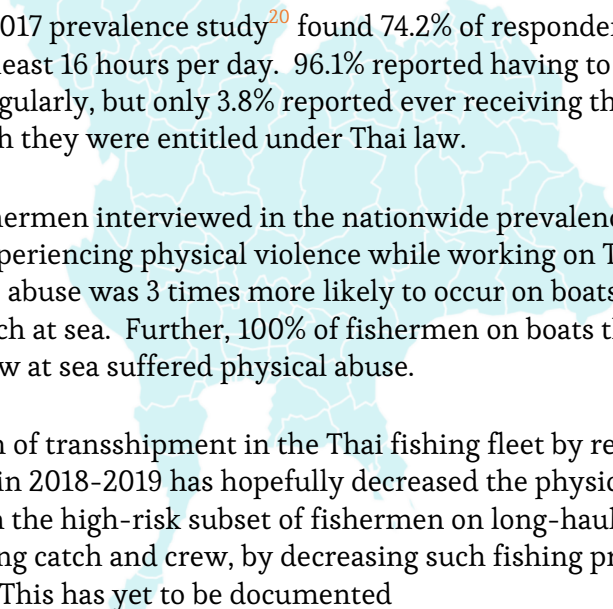
INDONESIA

- 
- Indonesian long line tuna fishers on boats fishing in Somalia, Madagascar, Sri Lanka, and Mauritius reported receiving little to no information about their jobs and where they would be fishing in advance, and then having their identity documents taken once they started work.
 - Physical abuse by boat captains on long-haul boats was reported to be rare but to happen from time to time, depending on the captain. One seasoned fisher who had had a range of experiences fishing in the Indian and Antarctic oceans expressed how, sometimes, working hours can be very long on boats when the crew is not experienced, efficient, or well-trained; on these boats, it is common to only get 3-4 hours of sleep per night.
 - Fishermen on Indonesian fishing boats reported that they had substandard onboard living arrangements. Several experienced fishers stated that they preferred to sleep on deck, exposing themselves to the weather and waves, rather than sleeping in the bunks provided.
 - Some fishermen also reported that they would have extremely long work hours with minimal rest. Some long-line vessel crew members explained that they would work for upwards of 18 hours a day on the most labour-intensive days. Others also reported that when they made mistakes on board, they would be punished by not being allowed to rest at the same time as other crew.
 - Many fishermen interviewed stated or showed fear of reprisal or retaliation for speaking to the researchers about exploitative work conditions.

WORKING CONDITIONS @ SEA

KEY RESEARCH FINDINGS

THAILAND

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- The Issara 2017 prevalence study²⁰ found 74.2% of respondents reported working at least 16 hours per day. 96.1% reported having to work overtime regularly, but only 3.8% reported ever receiving the overtime pay to which they were entitled under Thai law.
 - 18.1% of fishermen interviewed in the nationwide prevalence study reported experiencing physical violence while working on Thai fishing vessels; this abuse was 3 times more likely to occur on boats that transshipped catch at sea. Further, 100% of fishermen on boats that transshipped crew at sea suffered physical abuse.
 - Suppression of transshipment in the Thai fishing fleet by relevant Thai authorities in 2018-2019 has hopefully decreased the physical abuses occurring in the high-risk subset of fishermen on long-haul boats transshipping catch and crew, by decreasing such fishing practices altogether. This has yet to be documented

Due to high levels of informality at the vessel level, data and information on working conditions is not readily available for buyers, especially in Indonesia. This leads to a reliance on conditions being reported by vessel owners/companies or by vessel audits, both of which have acknowledged shortcomings. Direct feedback from fishers is ideal, however, as previously discussed, the channels available for fishers are few and there very serious risks of reprisals and harm that can be done to fishers if safeguards are not in place. Therefore, businesses are advised to not seek to engage directly with fishers regarding assessments of working conditions at sea for due diligence purposes, unless your business is prepared to put safeguards in place beforehand, be able act upon the information received, and support remedy.

Working conditions can vary depending on a number of factors, including the type of vessel, the specific vessel equipment, duration at sea, transshipment practices, makeup of the crew, and the boat captain and company. In domestic Indonesian fisheries, which have a predominantly national workforce, vulnerabilities appeared generally lower than in Thailand fisheries, although the rigor of research on these issues to date is not comparable; certainly, more rigorous documentation of the magnitude, distribution, and patterns of labour risk in the Indonesian fishing sector would be helpful to all stakeholders. Risks to Indonesian fishers operating on international vessels, however, have been better documented and could be seen to

parallel risks experienced by migrant fishers in Thailand.

Vulnerabilities for fishers can be greater than factory-based workers due to remoteness, lack of access to support resources, challenges for inspection and oversight, and overall higher level of hazards in the working environment. Fishers also generally do not have access to worker voice channels while at sea and are often out of mobile phone service range, although a few organisations are beginning to pilot worker voice at sea technologies to help address this.

Research findings from Indonesia highlighted that there was only a patchwork of actors supporting fishers on human rights and labour issues. Trade unions appeared to be virtually absent in fishing, and lacking the financial and physical resource to organise, advocate for and/or do legal casework for domestic fishers. In Thailand, the options for fishers are greater and the challenges of geographic expansiveness are considerably less, although certain nationalities, such as Cambodian fishers, had fewer resources.

Physical violence on vessels in Indonesia appeared to be relatively isolated, although verbal abuse was reported. Implementation of the regulation requiring fishers to have basic safety training (BST), a seaman's book, and sea working agreement was not yet in evidence, nor was the much-vaunted vessel level human rights certification.

IMPROVING DUE DILIGENCE & RESPONDING TO RISKS

Step 1. Understand that traditional due diligence methods cannot adequately assess most working conditions at sea. While it may be worthwhile to attempt to find risks in labour recruitment or payment systems through audits without cross-checking with workers, actual labour conditions and treatment of workers at sea cannot be adequately assessed without safe, voluntary worker feedback regarding the realities of how they are treated. Indicators of labour abuses such as violence and intimidation, threats of violence and intimidation, abusive or denigrating treatment, and discrimination cannot be reliably assessed from information provided by management (vessel owners, operators, managers, captains, or net supervisors). They can only be reliably assessed through safe, worker voice-driven due diligence and remediation.

Step 2. Develop a partnership with an independent party that workers trust. A locally-based non-profit organisation or worker rights group may be available in the area where you are sourcing from, to be able to support the development of ethical safeguards and to support remediation. In general, partnerships with organisations such as these can help ensure that supplier systems for labour recruitment and management are well functioning and effective, and can help be a resource on the ground to support both workers and supplier businesses—and possibly even recruiters too, all of which fundamentally impact the welfare and well-being of the workers in your seafood supply chain.

Reprisals are a reality for fishermen who are approached by social auditors and inspectors seeking detailed information about labour conditions. Fishers need safe, voluntary channels for communicating about their working conditions with people whom they trust, and who are capable of ensuring safeguards for workers speaking out—especially in environments where freedom of association and collective bargaining are limited. Here, an Issara Cambodian Outreach and Empowerment Officer meets with Cambodian fishermen in Thailand, sharing the latest information about their rights and what to do if they need help.



ENDNOTES

- 1 Katharine Jones and D Visser (Forthcoming, 2019). *Fish for Export: Exploitative Recruitment of Seafood Workers at the Intersection of State and Market*. British Academy Special Volume 2019.
- 2 An extensive library of NGO and media reports on the fishing sector can be found at <https://www.issarainstitute.org/library-publications-videos>, including reports from the ILO, Environmental Justice Foundation, London School of Hygiene and Tropical Medicine, Johns Hopkins School of Public Health, Human Rights Watch, Solidarity Center, the Associated Press, New York Times, Guardian, and The Global Post.
- 3 Issara Institute and IJM (2017). *Not in the Same Boat: Prevalence and Patterns of Labour Abuse Across Thailand's Diverse Fishing Industry*. Focus on Labour Issues in the Fishing Industry, Series Paper 2. Bangkok: Issara Institute.
- 4 California Environmental Associates (2018). *Trends in Marine Resources and Fisheries Management in Indonesia: A 2018 Review*. Los Altos: David and Lucille Packard Foundation.
- 5 SEAFDEC (2017). Indonesia Fisheries Country Profile. Found at: <http://www.seafdec.org/fisheries-country-profile-indonesia/>
- 6 Ibid 1.
- 7 Ibid 2.
- 8 For example, see Oxfam's campaign at <https://www.oxfam.org/en/behind-price/behind-seafood-our-markets-stories-human-suffering> and EJF's campaign at <https://ejfoundation.org/what-we-do/oceans/combating-seafood-slavery>.
- 9 Ibid 1.
- 10 Ibid 3.
- 11 Ibid 3; also Human Rights Watch (2018). Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry, found at <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry> ; also, Christina Stringer, H Whittaker and G Simmons (2016). *New Zealand's turbulent waters: the use of forced labour in the fishing industry*. Global Networks 16, 1: 3-24. Found at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/glob.12077> .
- 12 Rende Taylor, Lisa and O Ei Ei Chaw (2018). *Driving Behaviour Change of Recruiters, Suppliers, and Job Seekers Toward Ethical Recruitment: Critical Roles of Global Buyers and Grassroots Actors*. Bangkok: Issara Institute.
- 13 The Myanmar Overseas Employment Act (1999) states that 'A worker shall pay the service fees determined by the Central Committee either to the Department or to the Service Agent' (Chapter VIII, Section 23), and Ministerial Directive issued on 11 March 2019, signed by the Director General of the Department Labour of the Ministry of Labour, Immigration and Population, specifies these updated amounts.
- 14 Regulation of the Ministry of Maritime Affairs and Fisheries, Republic of Indonesia No. 42/PERMEN-KP/2016 on Fishers' Work Agreement for Fishing Vessel Seafarer.
- 15 Ibid 1.
- 16 Ibid 3.
- 17 Amanda Flaim, G Subramaniam, and L Rende Taylor (2018). *Eliminating Human Trafficking from the Thai Fishing Industry: Perspectives of Thai Commercial Fishing Vessel Owners*. Focus on Labour Issues in the Fishing Industry, Series Paper 4. Bangkok: Issara Institute.
- 18 Ibid 1.
- 19 Thai Ministerial Regulation on the Protection of Labour in Sea Fisheries B.E.2557 (2014), Section 10; minimum wages are set by Committee and governed by the Thai Labour Protection Act B.E 2541 (1998), recently amended in 2019.
- 20 Ibid 3.

Please note that all Issara Institute reports referenced here can be found in the Issara Institute online library at: <https://www.issarainstitute.org/library-publications-videos>.



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